

State of Wisconsin



2005 Assembly Bill 56

Date of enactment:
Date of publication*:

2005 WISCONSIN ACT

AN ACT *to create* 895.45 of the statutes; **relating to:** actions against sport shooting range owners or operators, against gun or sportsman's clubs, and against manufacturers, importers, trade associations, or dealers of firearms, firearm components, or firearm ammunition.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 895.45 of the statutes is created to read:

895.45 Actions against sport shooting range owners or operators, gun or sportsman's clubs, firearm or firearm ammunition dealers, or firearm trade associations. (1) In this section:

(a) "Firearm" means a weapon that acts by force of gunpowder.

(b) "Firearm dealer" means any person engaged in the business of importing, manufacturing, or dealing in firearms or firearm components and having a license as an importer, a manufacturer, or a dealer issued by the U.S. department of justice.

(c) "Firearm trade association" means a national or statewide trade association that derives income from membership dues of firearm dealers.

(d) "Local governmental unit" means a city, village, town, county, or school district.

(e) "Sport shooting range" has the meaning given in s. 895.527 (1).

(2) The state, a local governmental unit, and every department, division, board, or agency of the state or of a local governmental unit, may not bring an action against a firearm dealer, a firearm trade association, a manufacturer, an importer, or a dealer of firearm ammu-

nition, a gun or sportsman's club, or a sport shooting range owner or operator for damages resulting from, or equitable relief relating to, the design, distribution, manufacture, marketing, or sale of firearms, firearm components, or firearm ammunition or under any nuisance theory.

(3) Subsection (2) does not prohibit the state, a local governmental unit, or a department, division, board, or agency of the state or of a local governmental unit, from bringing an action against a firearm dealer, a firearm trade association, or a manufacturer, an importer, or a dealer of firearm ammunition:

(a) For breach of contract or express warranty as to a firearm, a firearm component, or firearm ammunition purchased by the state, by a local governmental unit, or by a department, division, board, or agency of the state or of a local governmental unit.

(b) Related to a firearm, a firearm component, or firearm ammunition that was designed, distributed, manufactured, marketed, or sold in violation of a state or federal law that could result in a criminal penalty or civil forfeiture. An action that is permitted under this paragraph may be brought only against a person who violated a state or federal law that could result in a criminal penalty or civil forfeiture and only if the harm giving rise to the action was proximately caused by the person's violation of a state or federal law that could result in a criminal

* Section 991.11, WISCONSIN STATUTES 2003-04 : Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

penalty or civil forfeiture. The fact that a firearm, a firearm component, or firearm ammunition was designed, distributed, manufactured, or sold in violation of a state or federal law that could result in a criminal penalty or civil forfeiture must be shown by clear and convincing evidence.

(4) The court shall dismiss any action commenced or pending that is prohibited by sub. (2).

(5) (a) 1. A firearm dealer, a firearm trade association, or a manufacturer, an importer, or a dealer of firearm ammunition is immune from civil liability in any action for an injury or death caused by a firearm, a firearm component, or firearm ammunition.

2. A gun or sportsman's club or a sport shooting range owner or operator is immune from civil liability in any action for an injury or death caused by a firearm, a firearm component, or firearm ammunition, if the action is based on the participation by the gun or sportsman's club or the sport shooting range owner or operator in the distribution, marketing, sale, or other transfer of the firearm, firearm component, or ammunition.

(b) 1. No equitable relief may be granted against a firearm dealer, a firearm trade association, or a manufacturer, an importer, or a dealer of firearm ammunition in any action for an injury or death caused by a firearm, a firearm component, or firearm ammunition.

2. No equitable relief may be granted against a gun or sportsman's club or against a sport shooting range owner or operator in any action for an injury or death caused by a firearm, a firearm component, or firearm ammunition, if the action is based on the participation by the gun or sportsman's club or the sport shooting range owner or operator in the distribution, marketing, sale, or other transfer of the firearm, firearm component, or ammunition.

(c) The immunity under par. (a) does not apply to any of the following:

1. An injury or death caused by the negligent handling of a firearm, a firearm component, or firearm ammunition by an individual covered under par. (a) if, at the time of the act or omission that constitutes the negligent handling, the individual is in actual physical possession of the firearm, firearm component, or firearm ammunition.

2. An injury or death caused by a firearm, a firearm component, or firearm ammunition that an individual covered under par. (a) uses in violation of a state or federal law that could result in a criminal penalty or civil forfeiture or that an individual covered under par. (a) uses while committing another act that violates a state or federal law that could result in a criminal penalty or civil forfeiture.

(d) The immunity under par. (a) and the prohibition under par. (b) do not apply to any of the following:

1. An injury or death that was caused by a defect in the workmanship or materials of a firearm, a firearm component, or firearm ammunition.

2. An injury or death that was caused by a firearm, a firearm component, or firearm ammunition that was manufactured or sold in violation of a state or federal law that could result in a criminal penalty or civil forfeiture. An action that is permitted under this subdivision may be brought only against a person who violated a state or federal law that could result in a criminal penalty or civil forfeiture and only if the harm giving rise to the action was proximately caused by the person's violation of a state or federal law that could result in a criminal penalty or civil forfeiture. The fact that the firearm, firearm component, or firearm ammunition was manufactured or sold in violation of a state or federal law that could result in a criminal penalty or civil forfeiture must be shown by clear and convincing evidence.

SECTION 2. Initial applicability.

(1) This act first applies to actions commenced on the effective date of this subsection.